

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MESIROV GELMAN JAFFE CRAMER &	:	CIVIL ACTION
JAMIESON, LLP	:	
	:	
v.	:	
	:	
SVD REALTY, LP and	:	
1150 BRISTOL ASSOCIATES, LP	:	NO. 00-2107

MEMORANDUM ORDER

This is an interpleader action. Plaintiff seeks to resolve competing claims over funds being held in escrow in a transaction for the sale of real estate.

Plaintiff filed this action in the Philadelphia Common Pleas Court and Bristol then removed the action to this court. Plaintiff has elected to proceed with the action pursuant to Fed. R. Civ. P. 22. The parties are of diverse citizenship and the amount in controversy is \$100,000.

Presently before the court are defendant Bristol's alternative motions to abstain or to stay proceedings and plaintiff's response, styled as a cross-motion to allow interpleader.

The underlying facts are undisputed, although the parties differ as to their legal consequences. On November 30, 1999, Bristol and SVD entered a Real Estate and Asset Purchase Agreement (the "Sales Agreement") whereby SVD agreed to sell to Bristol a parcel of land located in Bristol, Rhode Island (the "premises") for \$1.3 million. The Sales Agreement provided that

Bristol would make two separate deposits of \$100,000 each, one at execution of the agreement and one upon the close of the due diligence period. The funds were to be placed in an escrow account. Plaintiff, SVD's counsel, was to act as escrow agent. The Sales Agreement provides that it will be governed and construed in accordance with the laws of Rhode Island.

Contemporaneous with the execution of the Sales Agreement, Bristol and SVD signed an Escrow Agreement providing that the deposits submitted by Bristol under the Sales Agreement would be held in escrow and monitored by plaintiff. In the event of conflicting demands upon the escrow account, the Escrow Agreement authorizes plaintiff to discontinue any further acts on its part until such conflict is resolved and to commence proceedings to resolve any conflicting demands. The Escrow Agreement contains a Pennsylvania choice of law clause.

Bristol deposited the initial \$100,000 into the escrow account, but never made the second payment. When the parties failed to close on the Sales Agreement, Bristol filed a breach of contract action in the Superior Court for Providence County, Rhode Island. Bristol alleges that SVD breached the Sales Agreement by failing to convey perfect title to the premises and by failing to direct the escrow agent to return Bristol's \$100,000 deposit. Bristol claims damages in the amount of

\$100,000, the amount of the deposit. Plaintiff initiated this action several days later.

SVD filed a counterclaim in the Rhode Island action, alleging that Bristol breached the Sales Agreement by refusing to accept title to the premises after failing to object to specific title encumbrances during the period for due diligence specified in the Sales Agreement. SVD seeks, inter alia, a determination of its right to retain Bristol's deposit of \$100,000. The Rhode Island court has issued a writ of attachment on the premises.

Interpleader is an equitable remedy. See Sanders v. Armour Fertilizer Works, 292 U.S. 190, 199 (1934); NYLife Distribs., Inc. v. The Adherence Group, Inc., 72 F.3d 371, 380 (3d Cir. 1996). It is intended to facilitate the joinder into one action of adverse claimants to a single fund to relieve the stakeholder of potential multiple liability. Id. at 381-82; Equitable Life Assurance Soc'y v. Porter-Engelhart, 867 F.2d 79, 89 (1st Cir. 1989). An exception to the liberal standard generally applicable to the availability of interpleader exists when there is a pending state action that can adequately resolve the issues presented by the interpleader action. See NYLife, 72 F.3d at 382 (district courts enjoy discretion over whether to dismiss or stay interpleader suit due to parallel state court proceedings); American Airlines, Inc. v. Block, 905 F.2d 12, 14 (2d Cir. 1990) (federal court may abstain from invoking equitable

power in interpleader action if alternate tribunal can relieve stakeholder of threat of double liability); Home Indemnity Co. v. Moore, 499 F.2d 1202, 1205-06 (8th Cir. 1974) (need for interpleader obviated when disputed issues likely to be resolved in alternate proceeding).

The factors considered when deciding whether to abstain or stay proceedings in an interpleader action in the face of pending state litigation include whether the state action is truly a "parallel" proceeding; determining which forum will protect the stakeholder's interests more effectively "while providing the claimants with the more efficient, convenient, and expeditious vehicle to settle their dispute to the fund"; and, "ensur[ing] that procedural fencing, forum shopping or gamesmanship is not rewarded. NYLife, 72 F.3d at 382-83.

A state action is "parallel" to a federal suit if both suits involve substantially the same parties and present substantially the same issues. See Caminiti & Iatarola, Ltd. v. Behnke Warehousing, Inc., 962 F.2d 698, 700 (7th Cir. 1992); New Beckley Mining Corp. v. Int'l Union, UMWA, 946 F.2d 1072, 1073 (4th Cir. 1991).

Plaintiff argues that the two actions involved here are not parallel because Bristol does not expressly request that the Rhode Island court turn over the escrow fund to it. Bristol alleges in the Rhode Island action that SVD breached the Sales

Agreement by refusing to direct plaintiff to return the \$100,000 deposit to Bristol and seeks \$100,000 "as a result of [SVD's] breach." It thus appears that Bristol does effectively seek return of the escrowed funds. Moreover, SVD expressly seeks a declaration in the Rhode Island action of its right to the escrowed funds. All issues presented in a state proceeding, whether originating by the way of a claim, defense or counterclaim, are relevant in determining whether it is a parallel action. See Brillhart v. Excess Ins. Co., 316 U.S. 491, 495 (1942). The sole issue presented by plaintiff's interpleader action, that is whether Bristol or SVD is entitled to the escrow funds, is wholly encompassed within the scope of the Rhode Island action. The resolution of either action would turn on a determination of when the due diligence period ended and which party breached the Sales Agreement.

Providence and Philadelphia are barely an hour apart by air. The number of witnesses would appear to be limited. A resolution of the underlying conflict would appear largely to entail a review of pertinent documents and correspondence between counsel regarding an extension of the due diligence period. While it would be nominally more convenient for plaintiff to litigate here and for Bristol to litigate in Rhode Island, there has been no showing that it would be appreciably more or less efficient, expeditious and convenient for the claimants to

resolve the competing claims to the fund in one action or the other. It would, of course, be particularly inefficient, inconvenient and wasteful to litigate the underlying dispute in both forums.

Plaintiff notes that the Rhode Island court does not have jurisdiction over the escrow funds per se, apparently to suggest that the Rhode Island court could not adequately protect plaintiff's interests. Bristol notes with some force that with SVD's concurrence, the escrowed funds could readily be deposited into the registry of the Rhode Island court. In any event, Bristol and SVD would be bound by the determination of entitlement to the funds made in the course of the Rhode Island litigation and there is no suggestion that plaintiff could be liable to either for honoring that determination.

The court recognizes that Bristol consented to plaintiff serving as escrow agent while continuing to serve as counsel for SVD. Nevertheless, there appears to be a certain amount of gamesmanship in the current maneuvering. Plaintiff is simultaneously suing and representing SVD in this action.¹ SVD was under no obligation to engage plaintiff's services in a suit by plaintiff against it, and it is difficult to characterize plaintiff as a disinterested stakeholder in a case where it owes

¹Mesirov is now in the course of dissolution and many of its attorneys have joined Schnader, Harrison, Segal & Lewis, including those involved in this action. Thus, while counsel for plaintiff and defendant SVD remain the same, they now operate from Schnader.

a duty of undivided loyalty to one of the claimants.² While a stakeholder need not be strictly neutral, the identity of interest between the stakeholder and an interpleaded defendant, in view of the Rhode Island action, suggests that plaintiff's purpose may be other than to shield itself from potential multiple liability. The claimants' dispute can be definitively resolved in Rhode Island. Interpleader should not be used for forum shopping. Indianapolis Colts v. Mayor & City Council, 733 F.2d 484, 486 (7th Cir. 1984). It is difficult to perceive this action as other than an attempt by SVD, with the collaboration of its counsel, to resolve its dispute with Bristol in SVD's preferred forum.

The court cannot discern any reason why the underlying dispute cannot be resolved and plaintiff's position protected through the vehicle of the Rhode Island action. Nevertheless, in an excess of caution, the court will retain jurisdiction at this juncture and grant a stay pending a resolution of the Rhode Island litigation. See Wilton v. Seven Falls Co., 515 U.S. 277, 288 n.2 (1995) (granting stay in interpleader action during pendency of state proceedings provides means of preserving

²In response to Bristol's lamentation, plaintiff states that "Mesirov's interest in the outcome of the dispute is no different than the interest of any law firm representing a client in litigation." That interest, of course, is one of undivided loyalty.

federal forum if state action should ultimately fails to resolve underlying controversy).

ACCORDINGLY, this day of February, 2001, **IT IS**
HEREBY ORDERED that defendant Bristol's Motion to Abstain from
Exercising Jurisdiction (Doc. #12, part 1) is **DENIED**, plaintiff's
Cross-Motion to Allow Interpleader (Doc. #15) is **DENIED** and
defendant Bristol's Motion to Stay Proceedings is **GRANTED**.

BY THE COURT:

JAY C. WALDMAN, J.